

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Before the court are three motions filed by the defendant, Melvin Two Shields, on July 15, 2008, requesting: a transcript of Dr. Schmidt's trial testimony; pages that are missing from a transcript in his possession; and audio recordings of all courtroom proceedings. See Docket Nos. 73, 74, and 75.

On July 14, 2006, a jury found Two Shields guilty of second degree murder (Count I) and assault resulting in serious bodily injury (Count II). See Docket No. 44. Two Shields was sentenced to three-hundred sixty (360) months on Count I and one-hundred-twenty (120) months imprisonment on Count II, to run concurrent. See Docket No. 54. His conviction and sentence were subsequently affirmed by the Eighth Circuit Court of Appeals. See Docket No. 60-2; United States v. Two Shields, 497 F.3d 789 (8th Cir. 2007).

On July 14, 2008, Two Shields filed, *inter alia*, a request for trial and sentencing transcripts. The court denied his requests in an order dated July 16, 2008, on the grounds that they were premature.

The statute governing fees for transcripts, 28 U.S.C. § 753(f), provides in part that transcripts may be furnished without charge to indigent persons “in proceedings brought under [28 U.S.C.] section 2255 . . . if the trial judge or a circuit judge

certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented.” The Eighth Circuit Court of Appeals has held “that any request for a free transcript prior to the filing of a section 2255 complaint is premature.” United States v. Losing, 584 F.2d 289, 291 (8th Cir. 1978). Because Two Shields has not filed a petition under 28 U.S.C. § 2255, the Court finds that the request for a free transcript is premature.

(Docket No. 72).

The same can be said about Two Shields’ most recent requests for transcripts. Two Shields has not filed a § 2255 petition. Consequently, he is not presently entitled to free transcripts.

Finally, with respect to Two Shields’ request for audio recordings, he is advised that the courtroom proceedings were transcribed by a court reporter and that the transcript is the official record of the court’s proceeding.

Two Shields’ motions to produce transcripts (Docket Nos. 73 and 74) are **DENIED** without prejudice. His motion to produce audio tapes of courtroom proceedings (Docket No. 75) is also **DENIED**.

IT IS SO ORDERED.

Dated this 11th day of September, 2008.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge